

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BLACKLIGHT POWER, INC.,

Plaintiff,

v.

Q. TODD DICKINSON,
Commissioner of Patents,
United States Patent
& Trademark Office,

Defendant.

Civil Action No. 00-00422 EGS

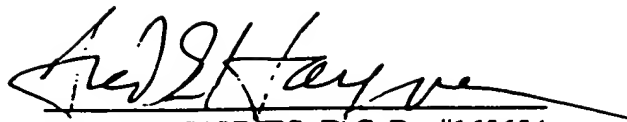
DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

Pursuant to Fed. R. Civ. P. 56, defendant, by his undersigned attorneys, hereby moves this Court for an order granting summary judgment in his favor on the grounds that no genuine issue as to any material fact exists and that defendant is entitled to judgment as a matter of law. In support of this motion, the Court is referred to the accompanying memorandum of points and authorities and to the accompanying statement of material facts as to which there is no genuine issue. A draft order reflecting the requested relief is also attached.

Respectfully submitted,

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OF COUNSEL:

KEVIN BAER
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Associate Solicitors
Office of the Solicitor
U.S. Patent and Trademark Office
Arlington, Virginia

neither arbitrary nor capricious. Plaintiff's '294 application is based on theories that are not generally accepted by the scientific community. The determination that one or more claims may be unpatentable is reasonable in light of the extraordinary claims asserted by plaintiff. *In re Chilowsky*, 229 F.2d 457, 462 (CCPA 1956) (alleged inventions that conflict with recognized scientific principles are required to overcome presumption of inoperativeness).

Plaintiff's description of its invention as "conductive, magnetic plastics that will revolutionize circuitry and aerospace engineering" (Complaint ¶ 9), as capable of providing a small battery charged to move an automobile 1000 miles at highway speeds without the use of fossil fuels (Complaint ¶ 9), and as "revolutionary technology" (Exhibit 9 at 3) provide further support for the Director's decision to reopen prosecution to ensure that a potentially invalid patent does not issue. These alleged accomplishments are astonishing by themselves, but when coupled with a new theory of quantum mechanics that allegedly is based on a medical doctor/inventor deriving a new atomic theory that unifies Maxwell's Equations, Newton's Laws, and Einstein's General and Special Relativity (Ex. 2 at col.4), the combination provides ample reason for the USPTO to review the question of patentability.

As detailed in the accompanying statement of facts, the generally accepted understanding of the hydrogen atom is that its "ground state" is its lowest energy level and that its single electron can exist only with whole integer quantum numbers. (Ex. 1 at 210-11). In contrast to the conventional understanding of quantum mechanics, plaintiff believes that it can stimulate the hydrogen atom to go below its "ground state" and that fractional quantum numbers are possible for the hydrogen atom. These assertions are not known to the Group Director charged with examining this technology as generally accepted in the scientific community. (Ex. 5 at 5-6)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BLACKLIGHT POWER, INC.)	<u>C.A. NO. 00-422 (EGS)</u>
)	
VS.)	WASHINGTON, D.C.
)	MAY 22, 2000
Q. TODD DICKINSON)	10:00 A.M.

TRANSCRIPT OF MOTIONS HEARING
BEFORE THE HONORABLE EMMET G. SULLIVAN
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE PLAINTIFF: MICHAEL H. SELTER, ESQ.
JEFFREY A. SIMENAUER, ESQ.
JEFFREY S. MELCHER, ESQ.

FOR THE DEFENDANT: FRED E. HAYNES, ESQ.
KEVIN BAER, ESQ.

COURT REPORTER: FRANK J. RANGUS, OCR
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PROCEEDINGS RECORDED BY ELECTRONIC STENOGRAPHY; TRANSCRIPT
PRODUCED BY COMPUTER.

1 WHAT THEY ARGUE IN THEIR BELIEFS IT'S CAPABLE OF DOING, THIS
2 DISCOVERY.

3 MR. BAER: YOUR HONOR, BECAUSE --

4 THE COURT: ARE YOU ARGUING IT'S A FRAUD ON THE
5 PUBLIC? YOU'RE NOT ARGUING THAT. YOU NEVER SAID IT WAS A
6 FRAUD.

7 MR. BAER: YOUR HONOR, IT IS NOT -- WE DON'T BELIEVE
8 IT'S A VALID (PAUSE) -- IT'S NOT PATENTABLE BECAUSE IT'S NOT
9 VALID ACCORDING TO THE KNOWN RULES OF SCIENCE AND --

10 THE COURT: BUT IT'S NOT FRAUDULENT, THOUGH, IS IT?

11 MR. BAER: WELL (PAUSE) --

12 THE COURT: THAT'S NOT BEEN YOUR ARGUMENT UP TO THIS
13 POINT.

14 MR. BAER: NO, I DON'T THINK I WANT TO USE THE TERM
15 "FRAUD." DR. MILLS MAY BELIEVE HE'S INVENTED SOMETHING. WE
16 DON'T BELIEVE HE'S DONE THAT AND WE'VE ASKED HIM TO COME IN AND
17 PROVE THAT, AND THEY WILL HAVE AN OPPORTUNITY TO DO THAT. THE
18 HARM IS THAT THERE IS A PRESUMPTION OF VALIDITY ATTACHED TO AN
19 ISSUED PATENT. IT IS VERY HARD FOR A THIRD PARTY TO OVERCOME
20 THAT. THEY CAN EXCLUDE OTHERS FROM THE MARKET. IF SOMEONE
21 ACTUALLY INVENTS THIS, ASSUMING DR. MILLS HAS NOT INVENTED
22 THIS, IF SOMEONE COMES ALONG AND INVENTS IT IN THE FUTURE, THEY
23 COULD BE BLOCKED BY A VALID PATENT.

24 THE COURT: I SEE.

25 MR. BAER: SO THERE IS A HARM TO THE PUBLIC.

1 POSSIBLY DO THIS?" SO THERE'S AN EXAMPLE OF A THIRD PARTY
2 CONTACTING US, AND THERE'S NOTHING SINISTER ABOUT THAT. IT'S
3 JUST HOW THE AGENCY LEARNED ABOUT IT, AND THE REAL QUESTION WAS
4 THE DECISION, IS THE DECISION RATIONAL?

5 THE COURT: WHAT ABOUT THE REAL PREJUDICE TO THE
6 GOVERNMENT? COUNSEL MAKES A POINT. WHEN I ASKED THE QUESTION
7 BEFORE, HE SAID, WELL, THE PREJUDICE IS IF SOMEONE PRESENTS AN
8 IDENTICAL PATENT APPLICATION AND IS UNABLE TO PROVE
9 PATENTABILITY, THAT PERSON WILL BE PRECLUDED FROM RECEIVING A
10 PATENT.

11 MR. BAER: CORRECT. NOT ONLY RECEIVING A PATENT --

12 THE COURT: THE GOVERNMENT'S ARGUMENT, THOUGH, IS THAT
13 THIS INVENTION, IF IT IS ONE, CANNOT BE PATENTED BECAUSE IT'S
14 NOT FRAUDULENT, BUT IT'S NOT VIABLE?

15 MR. BAER: YOUR HONOR --

16 THE COURT: IT'S NOT TRUE? WHAT IS IT?

17 MR. BAER: -- IF THIS APPLICATION WAS THE CURE FOR
18 CANCER BUT WE DIDN'T BELIEVE THEY HAD THE CURE FOR CANCER, BUT
19 WE ISSUED IT ANYWAYS, WHEN SOMEONE COMES ALONG FIVE YEARS FROM
20 NOW WITH A CURE FOR CANCER, THEY WOULD BE PRECLUDED BY THIS
21 PATENT. PLAINTIFF COULD EXCLUDE THEM FROM THE MARKETPLACE.

22 THE COURT: RIGHT.

23 MR. BAER: YOU CAN'T PRACTICE THIS.

24 THE COURT: WHAT YOU'RE SAYING IS, THIS INVENTION
25 CONTRAVENES ALL THE KNOWN LAWS OF PHYSICS AND CHEMISTRY AND IT

1 CAN'T, IT JUST (PAUSE) -- ARE YOU SAYING IT'S NOT TRUE? IT'S
2 NOT VIABLE?

3 MR. BAER: IT IS NOT KNOWN AT THIS POINT.

4 THE COURT: NOT KNOWN AT THIS POINT. RIGHT.

5 MR. BAER: BUT THAT DOESN'T MEAN --

6 THE COURT: BECAUSE IT'S NOVEL.

7 MR. BAER: BECAUSE IT IS VERY NOVEL. IT IS
8 EXTRAORDINARILY NOVEL, AND IT'S NOT TO SAY THAT THEY HAVE NOT
9 INVENTED SOMETHING. MAYBE THEY HAVE, BUT IT NEEDS TO GO
10 THROUGH FURTHER ADMINISTRATIVE REVIEW. AND IF THEY TRULY
11 HAVEN'T DONE THIS, CREATED THIS NEW ENERGY SOURCE, BUT THEY GET
12 A PATENT, THEY CAN PRECLUDE EVERYONE ELSE FROM EVER, FOR THE
13 NEXT 17 YEARS AT LEAST, FROM PROSECUTING THIS INVENTION. SO
14 WHEN SOMEONE COMES ALONG AND INVENTS THIS TEN YEARS DOWN THE
15 ROAD, PLAINTIFF CAN SAY, "OH, YOU CAN'T DO THAT" OR "YOU HAVE
16 TO PAY ME ROYALTIES."

17 THE COURT: SO THE ANSWER TO MY QUESTION IS, THE
18 GOVERNMENT IS NOT PREJUDICED AT ALL. YOU JUST ANTICIPATE
19 PREJUDICE TO SOMEONE ELSE IN THE FUTURE IF SOMEONE ELSE IS ABLE
20 TO DEMONSTRATE THAT THE ENERGY SOURCE EXISTS.

21 MR. BAER: THE PREJUDICE WOULD ALSO BE, WE'D BE
22 ORDERED TO ISSUE A PATENT THAT WE DO NOT BELIEVE AT THIS POINT
23 IS PATENTABLE, AND THAT IT'S NOT A REGISTRATION SYSTEM AT THE
24 PATENT AND TRADEMARK OFFICE. CONGRESS HAS CHARGED THE DIRECTOR
25 WITH EXAMINING PATENT APPLICATIONS, AND THAT'S WHAT WE'RE